

negotiated or arbitrated, may scrutiny of an application for interLATA entry by Ameritech properly proceed.

III. AMERITECH HAS NOT MET THE SECTION 271(c)(2)(B) COMPETITIVE CHECKLIST

Ameritech contends that if a particular agreement does not provide for access to a check list item, the carrier can use a most favored nation clause to get the desired element from another interconnection contract.¹³ This, according to Ameritech, constitutes providing the service as the service is currently available. This argument is incorrect and should be rejected. Section 271(c)(1)(A) addresses the actual provision of services. Provisioning constitutes more than merely making services available. Provisioning also means more than just offering a service. The provisioning of a service means it is up and running today.¹⁴ However, even if the Commission were to construe the language of the Act to require such a low threshold as to apply to a mere offering of services, Ameritech flunks this test.

¹³See Affidavit of Gregory J. Dunny attached to Ameritech Submission at p. 6

¹⁴The Commission should be aware that Section 29.13 of TCG's agreement with Ameritech does not allow TCG to purchase individual network elements from other interconnection agreements, but rather obtain broad categories of network elements; hence, TCG is not contractually allowed to purchase network elements with desired level of unbundling at different rates, terms and conditions. This starkly contrasts with the typical tariff situation, where TCG can choose which unbundled network elements to purchase. In fact, it is possible that one could interpret the lack of the ability to purchase individual network elements from other interconnection agreements means Ameritech does not meet the check list by offering sufficiently unbundled network elements. See Supplemental Rebuttal Testimony of Charlotte TerKeurst at p. 21, Illinois Commerce Docket No. 96-0404, attached as part of Exhibit H. See also Section VI, *infra*.

Ameritech asserts that it has met the competitive check list set forth in Section 271(c)(2)(B),¹⁵ and argues that every portion of the check list is currently available to TCG and other competitors. This contention, however, is false. Attached to these comments is the affidavit of Michael Pelletier, Director of Carrier Relations for TCG. In his affidavit,¹⁶ Mr. Pelletier shows that in a number of instances, many portions of the Section 271(c)(2)(B) check list are not currently available to TCG, even despite numerous MPSC orders requiring compliance.¹⁷

IV. STRICT PERFORMANCE STANDARDS MUST BE IMPLEMENTED AND USED FOR AT LEAST SIX MONTHS PRIOR TO ALLOWING AMERITECH TO ENTER THE INTERLATA MARKET

Entry by Ameritech into the interLATA market must be conditioned on incontrovertible evidence that its market power has been dissipated, for otherwise Ameritech will continue to have the ability and incentive to impede competition in the local exchange market. The costs of entry will be raised, entry may in fact be foreclosed, and the fundamental purpose of the 1996 Act will be subverted. The costs of competitive entry into the local exchange market are likely to be increased by Ameritech's entry into long distance unless there are clear performance standards and penalties for failure to meet them in place and operating for at least six months *prior to* entry. This will be the

¹⁵See Chart attached to Ameritech Submission.

¹⁶See Exhibit A, Affidavit of Michael Pelletier.

¹⁷See, also, MCI v Ameritech, MPSC U-10138 Opinion and Order issued February 24, 1994, wherein the MPSC first ordered dial 1 parity be offered no later than January 1, 1996. Nearly 3 years later Ameritech has still not complied with that order, nor several subsequent orders, including an order granting a Motion to Compel enforcement of the MPSC's orders. After the Federal Court declined to stop the numerous MPSC's orders and an Order of the Ingham Circuit Court, Ameritech got a temporary stay from the Michigan Court of Appeals.

case whether entry occurs early or later. Without operational performance standards, Ameritech will have an incentive to engage in the practice of "just barely acceptable" service to competitors, counting on the lengthy complaint process to escape penalty for many months, during which CLECs' costs are raised, their business reputations impaired, and their financial resources strained.

TCG's expansion, which requires the interconnection of more and more TCG facilities with Ameritech's facilities, will for a transition period make TCG more, not less, dependent on Ameritech's service quality. The technology and capabilities of Ameritech will become more, not less, critical to TCG. When Ameritech fails to turn up a circuit, TCG's customer blames TCG, not Ameritech. The chain of telecommunications service in our world of interconnected networks is only as strong as its weakest link. TCG backs its reputation as the carrier with the highest possible service quality by monetary guarantees to our customers--if our service quality falls below the standard we promise, we don't charge the customer. If the Ameritech link in the chain fails, TCG suffers financially and its reputation can also be impaired. Rarely does a new competitor in a market depend so much on the entrenched entity with market power to serve the new competitors' customers. Without effective performance standards and strict enforcement competition will easily be restrained.

Ameritech's ability regardless of whether inadvertent or advertent to raise its rivals' costs through simple delay and error is one of the greatest threats to full competition in the local exchange market. An Ameritech mistake on a competitor's service may be intentional, or it may be accidental, but whatever the cause, the effect is anticompetitive. Anticompetitive conduct by Ameritech is constrained now, in the best of cases, only by flimsy paper promises to do better in the future. Although TCG can complain to both state and federal regulators, the plain fact is that regulators,

given the procedures they are legally required to follow, cannot fix TCG's problems quickly enough to mitigate all the harm that Ameritech can cause TCG. Customers can leave in an instant. Complaints take months or years to wind through regulatory agencies. Ameritech's incentive to continue dilatory behavior and foist inefficiencies on their competitors can only increase once they are in the long distance business, for the potential revenue gains to them are greater the more local telecommunications service providers cannot effectively compete and exit the market or are foreclosed from entry or expansion.

Significant performance standards, together with meaningful penalties for their failure to meet the standards, are the only way to preclude anticompetitive behavior associated with the check-list. Such standards are entirely consistent with the Act. Ameritech must, by the intent of Congress, offer TCG interconnection arrangements "at least equal in quality to that provided by [the BOC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."¹⁸ As required by the FCC ruling in Docket 96-98, standards assuring high quality in interconnection and interoperability must be referenced to the internal standards of the BOC.¹⁹ Moreover, as was stated earlier, TCG's interconnection agreement with Ameritech provides for performance standards. The agreement, however, has not yet been implemented. Thus, it is premature to simply assume that Ameritech will follow through on the terms and provide improved quality service to its competitors, at least as good as it does to itself, affiliates, and large end user customers.

¹⁸Section 251(c)(2)(C).

¹⁹Re Implementation of Local Competition, FCC Docket No. 96-98, FCC 96-325, First Report and Order, issued August 8, 1996.

TCG therefore suggests that Ameritech's application should not be considered unless at least actual evidence of six months of positive performance reports are submitted along with the application. Ameritech must further commit to continue to meet the performance standards once relief has been granted, or risk forfeiting interLATA authority.²⁰

V. AMERITECH'S ENTRY INTO THE INTERLATA MARKET WILL NOT INCREASE THE LEVEL OF COMPETITION

Theoretically, the addition of Ameritech in an already competitive long distance market could increase the downward pressure on retail long distance prices for consumers, but whether this would actually be the case is far from certain. The addition of Ameritech to the long distance market while it still possesses such overwhelming market power over local exchange facilities is more likely to force emerging competitors out of the marketplace. Consumers purchasing long distance service might pay lower prices, but face above-cost prices for their local exchange service. In any event, Ameritech's entry is not the only nor the best way to increase the number of long distance competitors or the strength of any competitor. Long distance entry through resale occurs easily. Facilities-based competitors such as Frontier are expanding their networks. Moreover, consolidations--including Bell Operating Company ("BOC") consolidations--actually remove existing potential competitors, for example, lessening competition despite BOC entry.

²⁰Indeed, six months regarding Ameritech's performance is likely the minimum period where statistics that can be validated. The amount of time required to collect statistics will vary depending upon the quantity of service provided by competitors. If the quantity of service provided by Ameritech to competitors is low, a longer period of time than six months would be required to collect valid statistics.

Since there can be no assurances of the number of providers in the long distance market, the most important concern is whether Ameritech can leverage its existing monopoly market power in the local exchange market to impede competition once it has entered the long distance market.

The dominant local exchange carrier's market power will provide the opportunity for it to cross subsidize competitive long distance services with revenues from captive local exchange customers, engage in price discrimination, and impose cost-price squeezes on its rivals in any of the competitive market segments it serves. For example, a BOC can cross subsidize long distance service with revenues from captive local exchange service customers, even under separate subsidiaries, simply by virtue of the fact that the fiber backbone network that will be used to provide in region interLATA service has already been paid for by captive local exchange ratepayers. Upgrades to other facilities that will be used to provide both local and long-distance service also have been financed through regulated local telephone rates. BOCs also will be able to use their monopoly-funded brand name to market affiliate long distance services. Both such opportunities will enable BOCs to predatorily price long distance service.

Notwithstanding the requirement for separate subsidiaries for the provision of long distance service, Ameritech will have the incentive and the ability to engage in tying arrangements to induce customers to take both local and long distance service from the affiliates in order to achieve the lowest price on *either* service. It will be impossible to police the behavior of Ameritech customer services representatives who can subtly indicate to callers that the best service will be provided if the customer chooses Bell for both services. Indeed, if past behavior is any indication of future activity, the evidence revealed in Ameritech's "competitive" interLATA and intraLATA affiliate certification

proceeding, Re Ameritech Communications, Inc., MPSC Case No. U-11053, shows that it should be assumed that such tying arrangements and other anti-competitive behavior will likely be a major problem.²¹

As was shown by the evidence in Case No. U-11053,²² the risks that Ameritech will use its market power in local markets to hamper competition in the local exchange market are exceptionally high. Entry into the long distance market presents new opportunities for cost shifting. If long distance costs are shifted to the local market, they will be passed onto TCG and other CLECs in the price of interconnection and unbundled elements. Expansion of local competitors would be severely impaired.

Presently the only effective constraint against this is the possibility that the BOC will not gain interLATA entry until its monopoly market power has been eliminated. Recent interconnection agreements have not been fully effectuated, and Ameritech does not even have effective mechanisms in place for dealing with orders placed by TCG for unbundled network elements, as is shown in the accompanying affidavit.²³

VI. AMERITECH'S "INFORMATION" ON THE LEVEL OF LOCAL EXCHANGE COMPETITION IN ILLINOIS IS INACCURATE

Among the reams of "information" submitted by Ameritech is its prefiled rebuttal and surrebuttal testimony in the Illinois check list proceeding, Illinois Commerce Commission ("ICC")

²¹See Exhibit C, Testimony of William J. Celio on behalf of MPSC Staff.

²²See Exhibit D, Initial Brief of TCG Detroit; Exhibit E, TCG's Reply Brief; Exhibit F, TCG's Exceptions; and Exhibit G, TCG's Reply Exceptions.

²³See Exhibit A.

Docket No. 96-0404.²⁴ In its filing here in Michigan, Ameritech incorporates by reference its ICC testimony, and argues it has relevance here as it:

responds to assertions made by other parties in those proceedings raising concerns about whether and how the products and services offered by Ameritech entities comply with the competitive checklist.²⁵

Because Ameritech believes its ICC testimony has relevance, in order to set the record straight, TCG is attaching as Exhibit H the Supplemental Rebuttal Testimony of ICC Staff filed on January 7, 1997. In its testimony, ICC Staff show, based upon record evidence there, that Ameritech is not even close to meeting the competitive check list in that state. If, indeed, Illinois provides a template for Michigan as Ameritech asserts, clearly the ICC Staff--relying upon all the evidence, not just Ameritech's assertions about local competition--irrefutably show the competitive check list is not met in either state.

VII. AMERITECH DOES NOT PROVIDE TO TCG ACCESS TO ITS RIGHTS OF WAY

Ameritech asserts that it provides access to TCG and other competitors to its rights-of-way, in compliance with Section 271(c)(2)(B)(iii). This contention, however, is false. TCG still does not have access to the same rights-of-way that Ameritech currently occupies.

VIII. CONCLUSION

What the Michigan Commission correctly found just a few months ago in August, 1996 is still applicable today:

²⁴Ameritech Submission at p. 3.

²⁵*Id.*

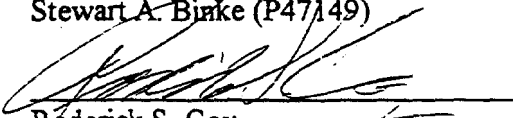
There is virtually no competition in local exchange markets at this time.²⁶

Certainly, if TCG's experiences are any indication of the competitive nature of the Michigan local exchange market as a whole, Ameritech has not yet met the Section 271(c)(2)(B) check list--not by a long shot. Therefore, it would be premature to allow Ameritech to enter the interLATA telecommunications market.

Respectfully submitted,

Teleport Communications Group, Inc.
and TCG Detroit

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²⁶See Re AMERITECH COMMUNICATIONS, INC., MPSC Case No. U-11053, at p. 27 (order conditionally approving license application when FCC finds Section 271 compliance), August 28, 1996.

STATE OF MICHIGAN)
) SS
COUNTY OF INGHAM)

AFFIDAVIT

Michael Pelletier, being first duly sworn, deposes and says that:

1. I am Director, Carrier Relations for Teleport Communications Group Inc. ("TCG").
2. I have been employed by TCG performing these duties since June 3, 1996.
3. Prior to joining TCG, I was employed by Ameritech for twenty-eight (28) years, with responsibilities for a portion of that time relating to business relations with competitive providers of basic local exchange services, such as TCG Detroit.
4. I am responsible for negotiating and implementing interconnection agreements with incumbent local exchange carriers on behalf of TCG and its state operating affiliates in a number of states, including the State of Michigan.
5. I am therefore personally aware of whether, and to what extent Ameritech Michigan, is providing interconnection to TCG Detroit in the State of Michigan.
6. I have reviewed Ameritech Michigan's Submission of Information filed on December 16, 1996 with the Michigan Public Service Commission ("MPSC") in Case No. U-11104, as well as the relevant portions of the Application of Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan, filed with the Federal Communications Commission ("FCC") on January 2, 1997.
7. It is my opinion that Ameritech Michigan's submissions to the MPSC and the FCC do not provide accurate information in several instances regarding TCG Detroit on whether competitive check list items are currently available, and whether they are in fact implemented.
8. Ameritech Michigan claims that it has implemented and made operational electronic interfaces for preordering, ordering, provisioning, maintenance, repair, and billing in compliance with the FCC deadline of December 31, 1996 to implement these systems.¹ Electronic interfaces as described above have not been made available to TCG Detroit despite repeated requests. I was told by Ameritech Michigan that electronic interfaces would be available for trial with TCG Detroit in February 1997, and have not been informed otherwise. Ameritech Michigan has not provided a date when electronic interfaces will become generally available. TCG Detroit is not currently using electronic interfaces.
9. Ameritech Michigan states that TCG Detroit has obtained Operator Services from Ameritech.² TCG Detroit has not executed an Operator Services Agreement with

¹Ameritech's Submission of Information in Case No. U-11104, Introduction at 2.

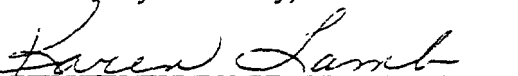
²Ameritech's Submission of Information, "Michigan Checklist Summary."

Ameritech Michigan, but rather, provides access to Ameritech Michigan's operator services as part of the bundled DOD Service tariffed offering ordered by TCG Detroit.

10. Ameritech Michigan asserts that it provides, as standard offerings, unbundled access to seven types of network elements including interoffice transmission facilities-dedicated and shared transport.³ All unbundled access facilities currently ordered and used by TCG Detroit were ordered from Ameritech Michigan's existing tariffs, specifically, Ameritech Michigan's Special Access Tariff. I am unaware of any unbundled offering of interoffice transmission facilities that has been made available to TCG Detroit.
11. Ameritech Michigan asserts that TCG Detroit has purchased unbundled network elements including unbundled loops, unbundled transport, signaling networks, call related databases, operator services, and directory assistance.⁴ TCG Detroit has not requested, nor has it purchased, the unbundled elements listed above.
12. Ameritech Michigan states that it offers unbundled dedicated interoffice transport facilities, unbundled dedicated entrance facilities, and shared transport transmission facilities as described in its agreement with AT&T.⁵ I am unaware of the availability of Telegraph, Direct Analog, Ameritech Base Rate, Ameritech DS1 and Ameritech DS3 Services from any source other than Ameritech Michigan's Special Access Tariff. I am unaware of the availability of Ameritech OC-3, Ameritech OC-12, and Ameritech OC-48 Services on an unbundled basis.

IN WITNESS WHEREOF, I have hereunto set my name and seal this 8th day of January, 1997.

Subscribed and sworn to before me
this 9th day of January, 1997.



Karen Lamb, Notary Public
Clinton County, Acting in
Ingham County, Michigan
Expiration: May 4, 1997

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³Ameritech's Submission of Information at 7.

⁴Ibid. at 9.

⁵Ibid. at 24.